

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121931-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 17th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 16, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on June 23, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used to make its final adverse determination. The Commissioner received BCBSM's response on July 5, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's prescription coverage is defined in the *Flexible Blue Rx Program Certificate* (the certificate).

In 2010 the Petitioner was diagnosed with prostate cancer and underwent a prostatectomy. As a result, he suffers from erectile dysfunction (ED). To alleviate the problem,

his physician prescribed an installed medication known as Muse (“medicated urethral system for erections”) for use in conjunction with an oral medication (Cialis).¹

The Muse was prescribed for daily use. BCBSM denied coverage for dosages in excess of 12 per month or 36 in a 90-day period.

The Petitioner appealed BCBSM’s determination. BCBSM held a managerial-level conference on March 29, 2011, and issued a final adverse determination dated March 30, 2011, reaffirming its partial denial.

III. ISSUE

Is BCBSM required to cover the Petitioner’s full Muse prescription?

IV. ANALYSIS

Petitioner’s Argument

The Petitioner believes that the Muse prescription should be covered by BCBSM because of medical necessity. In a letter dated May 30, 2011, the Petitioner’s physician explained why he prescribed the Muse:

. . . Over the past 18 months [the Petitioner] has tried and failed the use of medications as a form of mono-therapy. In hopes to help alleviate this situation, I have prescribed . . . not only oral medication but with an installed medication known as Muse. These 2 medications used in conjunction with one another has [*sic*] been known to afford patients who suffer with this condition a more normal healthy lifestyle.

Therefore, it was my opinion that this patient would most benefit from dual therapy of Cialis along with Muse medication.

I believe the above situation does define and meet the criteria to explain medical necessity.

BCBSM’s Argument

BCBSM’s denial of coverage for additional quantities of Muse is based on the following provision in the certificate under “Section 3: Prescription Drugs Not Covered” (p. 3.1):

¹ In his request for external review, the Petitioner mentioned both Muse and Cialis. Apparently Cialis alone is not effective without the Muse. However, the final adverse determination only addressed Muse so this review is limited to the Muse prescription.

We will not pay for the following:

* * *

- More than 12 doses of an impotence drug in a 30-day period at retail, or no more than 36 doses in a 90-day period for mail order

BCBSM maintains that its denial of coverage for any quantity limit is appropriate.

Commissioner's Review

The Petitioner and his physician advance the argument that the Muse is medically necessary. However, there is nothing in the record that indicates in any way that there would be medical consequences if the Petitioner is limited to the number of doses of Muse allowed in the certificate.

The Petitioner's prescription plan limits coverage of drugs for the ED treatment to 12 doses in a 30-day period when acquired at retail, or 36 doses in a 90-day period when received through mail order. Neither the certificate nor state law requires BCBSM to cover additional doses.

The Commissioner finds BCBSM correctly denied coverage of the prescribed impotence drug under the terms and conditions of the certificate.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of March 30, 2011, is upheld. BCBSM is not required to cover any dosages of Muse beyond the limitations in the certificate.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.